

Chapter 5.44

ENTERTAINMENT PERMITS

(1265-12/66, 1444-10/68, 1454-12/68, 3213-11/93, Urgency Ordinance 3247-8/94, Urgency Ordinance 3341-10/96, 3449-2/00, 3618-11/03, 3862-2/10, Chapter 5.44 repealed and replaced in its entirety by Ordinance 3915-9/11)

Sections:

- 5.44.010 Definitions
- 5.44.020 Entertainment permit required
- 5.44.030 Entertainment permit—Application and Renewal
- 5.44.040 Zoning and Land Use Laws
- 5.44.050 Permit Application and Renewal fee
- 5.44.060 Permit Approval and Renewal
- 5.44.070 Entertainment restrictions
- 5.44.080 Permit-Period valid
- 5.44.090 Permit-Notice to Applicant of Action Taken
- 5.44.100 Exceptions
- 5.44.110 Revocation and/or Suspension of Permit
- 5.44.120 Suspension/Revocation of Permit--Notice to Applicant of Action Taken
- 5.44.130 Revocation of permit - Reapplication
- 5.44.140 Permit Violations
- 5.44.150 Separate Violations
- 5.44.160 Appeal Process

5.44.010 Definitions. The following definitions shall be for purposes of this Chapter only, unless specifically adopted by another section of the Huntington Beach Municipal Code for use therein.

- (a) **Ambient music.** Prerecorded music which is audible from a distance of no more than ten (10) feet from any portion of the exterior of the premises;
- (b) **Chief of Police.** Shall include employee(s) of the Police Department designated by the Chief of Police to act on his or her behalf;
- (c) **Establishment(s).** Any area within the limits of the City of Huntington Beach to which the public may be invited and where alcoholic beverages are served and entertainment is provided;
- (d) **Entertainment.** An event or series of events, or activities or business, occurring alone or as part of another business, to which the public is invited to watch, listen, or participate, (including dancing) or is conducted for the purposes of holding the attention of, gaining the attention of or diverting or amusing guests or patrons, including, but not limited to: live music, recorded music played by a disc jockey (DJ) or other performance which is knowingly permitted by the establishment and attended by members of the public and whether said activities are compensated by the establishment.
- (e) **Dance or Dancing.** Movement of the human body accompanied by music or rhythm.

- (f) Land Use Approval. Includes conditional use permit(s), or any other land use discretionary permit.

5.44.020 Entertainment permit required. No person shall provide or allow any type of entertainment at an establishment without an Entertainment Permit issued by the Chief of Police as hereinafter provided.

5.44.030 Entertainment permit—Application and Renewal. Applicants for Entertainment Permit(s) must be at least the age of 21 and shall first complete a written, signed and acknowledged under penalty of perjury application providing the following applicable or additional information as determined by the Chief of Police:

- (a) A state driver license or identification card number of the applicant in the event any other names, including aliases are used by the applicant, additional information regarding identity may be required. The applicant shall also provide his or her permanent address;
- (b) The address as well as days and specific hours of operation and entertainment and where the entertainment is proposed;
- (c) The full name(s) including aliases of the person or persons having the management or supervision of applicant's business;
- (d) A statement describing the applicant's business and the proposed entertainment;
- (e) Criminal records (including misdemeanors) of management or supervisory personnel of applicant's business;
- (f) Information identifying person(s) managing or supervising applicant's business.
- (g) A floor plan and site plan showing the building interior and grounds, including specific area(s) where entertainment will take place, parking spaces, queuing area if applicable and the dimension of each portion;
- (h) A copy of any other licenses, permits, or entitlements (including conditions of approval) issued to the applicant;
- (i) A copy of any building or property lease or contract for the address for which the entertainment will take place;
- (j) The name and address of the owner and lessor of the real property upon which the business is to be conducted;
- (k) The address to which the Entertainment Permit and any legal notice is to be mailed;
- (l) A statement under oath that the applicant has read and understands the provisions of this chapter;

5.44.040 Zoning and Land Use Laws. Prior to applying for Zoning or Land Use Approval (if so required) the applicant will first apply to the Chief of Police for an Entertainment Permit. The Chief of Police will receive the application, investigate, and make tentative written findings for approval or denial and conditions of permit approval as set forth herein within 30 calendar days of receipt of a complete application. Upon receipt of tentative findings and conditions of permit approval from the Chief of Police, the

applicant may apply for Zoning or Land Use Approval and may present the tentative findings and conditions of permit approval to the applicable Zoning or Land Use Approval body as evidence of tentative approval by the Police Department. If the Zoning or Land Use Approval is granted, the entertainment permit may be automatically approved and subsequently issued by the Chief of Police for one year unless at any time prior to final approval of an entertainment permit, additional facts are discovered; the permit will not be automatically approved and the Chief of Police may impose additional conditions or deny the permit as provided herein.

If the land use approval is denied the tentative findings and conditions of permit approval shall become void and without any legal effect. This additional process will not be applicable to permit renewals.

5.44.050 Permit Application and Renewal fee. A separate fee shall be paid at the time of filing of each application for a permit. The fee shall be set by resolution of the City Council.

5.44.060 Permit Approval and Renewal. In order to approve an entertainment permit the Chief of Police will investigate the facts and shall approve or deny and/or condition an entertainment permit upon making the following written findings:

- (a) The granting of previous entertainment and other related permits to the applicant has not, in the past, resulted in the operation of an establishment which have (1) created public or private nuisances, (2) violated any noise regulations or (3) created other disturbances to the surrounding community such that calls for services to the Police Department have exceeded five in the preceding twelve (12) months;
- (b) The business or applicant has not received four or more administrative citations which have been upheld at an administrative hearing, or been convicted of, or has entered a plea of guilty to four or more violations of the provisions of this Chapter, or of any other law or ordinance relating to such business;
- (c) The entertainment will not attract crowds exceeding applicable capacity limits for that location or would not compromise the public safety and/or peace and welfare of the surrounding area or the business;
- (d) The entertainment will be compatible with the surrounding community considering proximity to other businesses, residences etc;
- (e) The granting of an entertainment permit will not violate the Huntington Beach Municipal Code or other applicable state, or federal laws or regulations;
- (f) No outstanding debt, including any fees taxes or charges exist with the City of Huntington Beach;
- (g) All Land Use Approval(s) have been obtained.

5.44.070 Entertainment restrictions. The Chief of Police may impose the following restrictions on the Entertainment Permit to mitigate health, welfare and safety concerns.

- (a) That entertainment is not audible beyond 50 feet from the exterior walls of the business in any direction. That doors and windows be closed during performances to alleviate noise issues;

- (b) That the premises has sufficient sound-absorbing insulation such that noise generated within the premises shall not be audible from the exterior;
- (c) For new permits or locations where structural modifications have been made, the applicant shall submit a sound survey prepared by a licensed engineer showing that the proposed entertainment will not create undue noise or violate the decibel limits for the zoning district. This survey shall state the maximum allowable interior decibel limits;
- (d) That activities taking place at the establishment are only those specified in the entertainment permit and/or in the license issued by the State of California Alcoholic Beverage Control, Conditional Use Permit, California Civil Code, or any other restriction issued by any regulatory power with authority over the business or premise;
- (e) That all areas of the establishment that are accessible to patrons shall be illuminated to make easily discernible the appearance and conduct of all persons in the business;
- (f) That the entertainment permit is conspicuously posted in establishment;
- (g) That conditions imposed herein apply at all hours, regardless if entertainment is present;
- (h) That persons under the age of 21 be accompanied and under the care at all times of a parent or legal guardian;
- (i) Limit hours when entertainment is permitted including days of the week and hours of the day;
- (j) That the types of entertainment be restricted. For example amplified vs. non amplified, live bands vs. DJ, number of performers and where entertainment can be performed such as inside, stage location, dance floor location and size and where dancing may take place, if at all;
- (k) In addition to any requirements by State of California Alcohol Beverage Control, the City may condition alcohol activities not preempted by state law such as requirements for “cover charge”, minimum drink purchases, happy hour or reduced price drink promotions, games or contests involving the consumption of alcohol;
- (l) That additional security be provided including:
 - 1. Uniformed or non-uniformed security officers certified by State of California;
 - 2. Number of security officers;
 - 3. Security Cameras/system requirements;
 - 4. Areas security must patrol.

The above conditions are intended to protect the health, safety and welfare of citizens of Huntington Beach. The Chief of Police may impose additional conditions if unique circumstances at a particular establishment demonstrate health, safety and welfare issues that must be mitigated (unique conditions). If unique conditions are imposed, the Chief of Police will provide written statement with facts demonstrating the need for the unique conditions.

5.44.080 Permit-Period valid. The permit shall be granted for the specific occasion requested, or if the request is for continuous permit, the permit shall be issued for not longer than one year.

5.44.090 Permit-Notice to Applicant of Action Taken. If no Land Use Approval is required, within thirty (30) calendar days after the filing of the application, unless the applicant signs a written waiver of notice, the Police Department shall mail or personally deliver written notice to the applicant stating the action that was taken on the application, together with a list of any conditions imposed if the application is granted or, if the application is denied, the specific grounds for the denial. The notice shall also advise the applicant of his/her right to appeal the denial of his application or any of the conditions imposed.

5.44.100 Exceptions: The following activities shall not require an Entertainment Permit:

- (a) Establishments which provide juke boxes, televisions, video games, video programs, or recorded music and no other entertainment, as herein defined, are not required to comply with the provisions of this chapter, unless the recorded music is played on equipment which is operated by an agent or contractor of the establishment for a period exceeding ten (10) minutes per hour. The intent of this section is to require a permit of establishments which provide that which is commonly known as a "DJ" and to exempt establishments which provide incidental or ambient music.
- (b) The issuance of a Sex Oriented Business Permit pursuant to Chapter 5.70 of this Code if applicable satisfies the entertainment requirement of this Chapter. A separate entertainment permit is not required.
- (c) For any entertainment provided for members and their guests at a private club where admission is not open to the public;
- (d) For entertainment conducted by or sponsored by any bona fide club, society or association, organized or incorporated for benevolent, charitable, dramatic or literary purposes having an established membership and which holds meetings other than such entertainment at regular intervals, when proceeds, if any, arising from such entertainment are used for the purposes of such club, society or association.
- (e) Any form of entertainment that State or Federal Law preempts the City from regulating.

5.44.110 Revocation and/or Suspension of Permit. The Chief of Police may revoke or suspend an entertainment permit upon receiving satisfactory evidence that:

- (a) Administrative or criminal citation(s) which have been upheld and which the Chief of Police determines evidence that continued operation of the entertainment will constitute public health, safety and welfare problems.
- (b) The entertainment (including employee or patron behavior) is detrimental to the public welfare.
- (c) The application contains incorrect, false, or misleading information; or

- (d) The permit holder has had an entertainment permit or other similar permit or license denied or revoked for cause by the City of Huntington Beach or any other jurisdiction located in or out of this state prior to the date of application.
- (e) The permit holder caused or permitted to be caused a violation of any provision of this Chapter, conditions of Entertainment Permit or Land Use Approval.

5.44.120 Suspension/Revocation of Permit--Notice to Applicant of Action Taken.

Upon determining that grounds for permit revocation or suspension exist, the Chief of Police shall furnish written notice of the revocation to the permit holder. Such notice shall summarize the principal reasons for the revocation. If the notice is mailed, it shall be deposited in the United States Mail, first class postage prepaid, to the address shown on the application. Service shall be deemed complete upon personal service or mailed in the United States Mail. The notice shall also advise the applicant of his right to appeal the revocation or suspension of the permit.

5.44.130 Revocation of permit - Reapplication. Whenever a permit or license is revoked under the terms of this chapter, no other application for a permit under this chapter shall be considered for a period of one year from date of such revocation.

5.44.140 Permit Violations. All owners, employees, representatives, and agents shall obey all state, local, and municipal laws, conditions of the Conditional Use Permit, Entertainment Permit, Alcoholic Beverage Control License, or any other regulations, provisions, or restrictions prescribed at all times. Any violations of any law or conditions will be considered violations of the permit to constitute permit suspension or revocation in addition to civil or criminal enforcement.

5.44.150 Separate Violations. Any permit Violation described in section 5.44.110 shall constitute a separate violation of and each violation may be charged as a separate count in the event of administrative or criminal enforcement action.

5.44.160 Appeal Process. Only applicants and/or permit holders have standing to administratively appeal a decision of the Chief of Police. Appellee shall file an appeal with the Chief of Police within 10 days of receipt of decision. In the event an appeal is not filed, Appellee shall be precluded from further administrative appeal or judicial action.

- (a) Appellee shall submit a form to the Chief of Police detailing the facts/support and/or legal argument as to why his/her decision is being appealed. The Chief of Police shall forward the appeal form to the City Manager or his or her designee who shall be the adjudicative officer deciding the appeal.
- (b) A hearing will be set by the adjudicative officer within 30 days after receipt of the appeal from the Chief of Police.
- (c) The adjudicative officer will consider relevant evidence which may be written or oral in relation to the Police Chief's decision to deny or impose conditions regarding the permit as set forth above. The Appellee bears the burden of proving (civil standard) that the Police Chief's decision was arbitrary or capricious. The formal rules of evidence will not apply and cross examination will not be permitted. The hearing officer will provide written determination within 10 days after the hearing and that determination will be considered a final decision for purposes of administrative mandate.